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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

CJK, INC.,

Plaintiff and Respondent,

v.

WESTEND ENTERPRISES, INC.,

Defendant and Appellant.

B207894

(Los Angeles County Super. Ct.  
No. VC046484)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael A. Cowell, Judge. Affirmed as modified.

Susan L. Ferguson for Defendant and Appellant.

Legate, Law & Campbell and Robert J. Legate for Plaintiff and Respondent.

Defendant and appellant Westend Enterprises, Inc., doing business as Omni Prepaid Cellular (Omni), appeals from a judgment in this action for breach of contract following a bench trial in favor of plaintiff and respondent CJK, Inc. Omni contends there is no substantial evidence to support the following findings of the trial court: 1) the parties' contract allowed CJK to return unused products more than 90 days after purchase; and 2) the amount of the refund awarded to CJK. We conclude substantial evidence supports the finding that Omni was required to accept returns more than 90 days after purchase, but we agree that the amount of the refund award must be reduced. Therefore, we affirm the judgment as modified.

## **FACTS**

Moon Lee was a salesperson paid commissions to sell Omni's portable telephone handsets and prepaid telephone calling cards in California. Lee presented a purchase contract to CJK which provided in pertinent part that Omni would accept the return of unused handsets within 90 days, pay the resulting shipping costs, and reimburse CJK for the full purchase price. CJK asked Omni to remove the 90-day limitation on returns. Lee discussed the 90-day restriction with Omni.

Omni sent a revised contract to Lee which Lee gave to CJK. The revised contract provided that Omni would accept returns of unused handsets and give credit for unused pin numbers without any limitation based on the time of purchase. CJK and Omni executed the revised contract in March 2005. Omni charged \$37 per handset. The handsets were programmed with a toll free number to make telephone calls.

In the fall of 2005, CJK returned 5,874 handsets to Omni more than 90 days after purchasing them. CJK paid \$4,059.04 for the shipping costs to return the handsets. CJK also provided Omni with the batch numbers of prepaid cards that CJK wanted to return. CJK did not return any of the prepaid plastic calling cards or supply pin numbers from the cards that Omni claimed were needed to deactivate the cards. Omni required Lee to return the commission that he had earned on the products.

In November 2005, Omni sent an e-mail to Lee which stated that Omni wanted to repackage the telephones to use a local number, rather than a toll free number, and return the telephones to CJK. In the alternative, Omni suggested refunding \$27 per phone and holding \$10 per phone as a restocking fee. When CJK reordered the telephones with local numbers, the restocking fee would be released.

CJK investors were creating a new company for a cellular and prepaid card business called KTA. A conference call was held January 11, 2006, among Omni, Lee and CJK. CJK told Omni that if CJK received the refund payment owed for the returned products and the account was settled, then KTA would repurchase the handsets with local numbers from Omni in February.

In January 2006, Omni refunded \$27 per phone for 5,874 phones by providing a check to CJK in the amount of \$158,598, but Omni withheld the remaining \$58,520 that CJK had paid for the handsets.

CJK returned additional products to Omni over the next several months and continued to demand its refund in full. As of October 2006, CJK's records showed the balance Omni owed for returned products was \$131,966.50, which included \$48,132 for prepaid telephone cards.

## **PROCEDURAL BACKGROUND**

On April 19, 2006, CJK filed a complaint against Omni for breach of contract, requesting damages of \$177,766. Omni filed a cross-complaint against CJK.

A bench trial took place on January 22 and 23, 2008. The trial court issued a statement of decision on February 7, 2008. The court found Lee to have been the most credible witness. The provision of the contract allowing CJK to return products at any time was validated by Omni's acceptance of the returned units beyond the 90-day period. Therefore, Omni was required to provide a full refund. The court found Omni was entitled to the amount paid for the handsets returned to Omni, reduced by \$158,598 already refunded, for a total of \$131,966.50, plus reimbursement of shipping costs in the amount of

\$4,059.04. However, CJK was not entitled to compensation for phone cards purchased from Omni, because CJK did not return those items to Omni. On March 12, 2008, the court entered judgment in favor of CJK in the amount of \$136,025.54 as against Omni. Omni filed a timely notice of appeal.

## **DISCUSSION**

### **Standard of Review**

“In general, in reviewing a judgment based upon a statement of decision following a bench trial, ‘any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision. [Citations.]’ [Citation.] In a substantial evidence challenge to a judgment, the appellate court will ‘consider all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of the [findings]. [Citations.]’ [Citation.] We may not reweigh the evidence and are bound by the trial court’s credibility determinations. [Citations.] Moreover, findings of fact are liberally construed to support the judgment. [Citation.]” (*Estate of Young* (2008) 160 Cal.App.4th 62, 75-76.)

### **Agreement to Accept Product Returns**

Omni contends there is no substantial evidence to support the trial court’s finding that the parties’ contract allowed CJK to return products to Omni for a full refund more than 90 days after purchase. This is incorrect.

Lee testified that he told Omni that CJK would not agree to a 90-day limitation for returns and Omni agreed to remove the 90-day limitation. Omni sent Lee a revised contract for CJK that did not contain a 90-day restriction on returns and Lee gave the revised contract to CJK to sign. CJK’s president testified that Lee provided a revised contract without a 90-day limitation on the return of unused products, which he executed and returned to Omni. In fact,

Omni accepted handsets that CJK returned more than 90 days after purchase and issued a partial refund to CJK. The trial court's finding that the return provision of the contract was not limited to returns within 90 days of purchase was clearly supported by substantial evidence.

### **Amount Owed**

Omni contends the amount awarded is incorrect and must be reduced to \$58,874. CJK concedes that the amount awarded is incorrect and argues that the award should be reduced to \$77,266.04, but without providing citations to evidence in the record. We conclude that the amount of the award must be reduced to \$87,893.54.

The evidence showed that as of October 2006, the balance owed to CJK for the return of all products was \$131,966.50, which included \$48,132 for prepaid telephone cards. The trial court disallowed recovery for the telephone cards. The balance owed for returned products other than telephone cards was \$83,834.50. In addition, CJK was entitled to recover shipping costs of \$4,059.04. Therefore, the total amount owed to CJK for the return of unused handsets is \$87,893.54. The judgment must be modified to reflect the correct amount.

### **DISPOSITION**

The judgment is modified to award judgment in the principal amount of \$87,893.54 against Omni, and as modified, the judgment is affirmed. The parties are to bear their own costs on appeal.

KRIEGLER, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.